



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO.HB23MT-61706

FAIR HOUSING COUNCIL OF NORTHERN)	
NEW JERSEY and LEE PORTER,)	
EXECUTIVE DIRECTOR)	
)	
COMPLAINANTS,)	FINDING OF PROBABLE CAUSE
)	
v.)	
)	
BLAIR HOUSE CONDOMINIUM)	
ASSOCIATION,)	
)	
RESPONDENT.)	

Consistent with a Verified Complaint filed on September 16, 2010, the above-named respondent has been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, et seq.), and specifically within the meaning of N.J.S.A. 10:5-4 and 10:5-12(g), based on disability.

SUMMARY OF COMPLAINT

Complainants Fair Housing Council of Northern New Jersey and Lee Porter contend that Respondent, in its role as a condominium homeowner's association, discriminated against their client, Barbara Potash, because of her disabilities, and that they were harmed by Respondent's conduct. Complainants alleged that in September 2009, Potash submitted a request to Respondent for a waiver of its rule prohibiting dogs which would allow her to keep her dog as an emotional support animal as a reasonable accommodation for her disability.¹ Complainants alleged that on May 6, 2010, they submitted, through counsel, a request for reasonable accommodation to Respondent on Potash's behalf. Complainants alleged that Respondent denied their request on May 24, 2010. Complainants further alleged that they submitted a second request in a letter dated June 29, 2010, which went unanswered.

¹ Barbara Potash also filed a complaint with the Division (docket number HB23MT-61705).

SUMMARY OF RESPONSE

Respondent claimed Ms. Potash is not disabled and therefore not entitled to a waiver of Respondent's rules and regulations.

BACKGROUND

Complainant Fair Housing Council of Northern New Jersey (Fair Housing Council) is a non-profit corporation located in Hackensack, Bergen County, New Jersey. The Fair Housing Council provides housing and financial counseling to its clients, assists them in finding available housing, provides educational assistance to consumers and real estate professionals, and promotes equal opportunity in the rental and sale of housing. As part of its mission, the Fair Housing Council assists clients in obtaining reasonable accommodations for their disabilities. Complainant Lee Porter (Porter) is the Executive Director of the Fair Housing Council.

Respondent is the governing association of 110 residential and 5 professional units located in Hackensack, Bergen County, New Jersey. Respondent maintains a policy prohibiting dogs in its complex, whether housed in or visiting the complex. While not allowing dogs, Respondent does allow other animals, such as cats.

Potash has resided in Respondent's condominium complex for over 25 years. Potash sought the aid of Complainants Fair Housing Council and Lee Porter in obtaining a reasonable accommodation for her disabilities.

SUMMARY OF INVESTIGATION

The investigation revealed sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainants' client based upon her disabilities, and that Complainants were harmed by Respondent's actions. The investigation disclosed that on or about April 14, 2010, Barbara Potash contacted Complainants' office and made a complaint that Respondent refused permission to retain her emotional support animal as an accommodation for her disabilities. Potash reported that on September 25, 2009, she submitted a letter to Respondent stating she had obtained a dog and requesting a waiver of Respondent's "no dog" policy as an accommodation for her disabilities. Potash informed Complainants that Respondent's then attorney, Louis J. Verde, sent a letter requesting that Potash's health care provider complete a certification describing her disability and need for an accommodation. Potash reported that two of her providers completed the certification. Ilona Anne Hress, L.C.S.W., supported Potash's need for the emotional support animal as part of her treatment and noted that other treatment methods had little effect. Ronni Lee Seltzer, M.D., F.A.P.A., Diplomate of the American Board of Psychiatry and Neurology, Englewood, New Jersey, completed the certification describing Potash's disabilities and affirming her need for the support animal. Potash reported to Complainants that Respondent denied her

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request for a reasonable accommodation in a letter from its attorney dated April 14, 2010, which explained that Respondent would not waive its “no dog” policy, and threatened Potash with a lawsuit and the imposition of attorney’s fees if she did not remove her dog within 30 days.

Complainant Fair Housing Council maintains staff that counsels its clients on obtaining available housing and conducts outreach to prevent discrimination. It also assists clients in obtaining reasonable accommodations for disabilities when it suspects that housing providers may be engaging in unlawful discrimination in denying said accommodations. The Fair Housing Council reported that it had no plans to contact Respondent before Potash contacted it. Fair Housing Council reported that after interviewing Potash and reviewing documentation she provided, consistent with its mission, it intervened on her behalf.

The investigation disclosed that Fair Housing Council sent a letter to Respondent’s attorney requesting that Respondent reconsider and reverse its denial of the accommodation request. In its May 6, 2010 letter, Fair Housing Council stated that Potash has provided ample documentation of her disability through letters from her physicians, and that her physicians have provided evidence that Potash’s dog provides emotional and therapeutic support considered crucial to her well-being. Fair Housing Council further stated that Potash has taken all the steps that Respondent has required to show that her request is reasonable and necessary under the circumstances. In response, Mr. McGowan, Respondent’s attorney, sent a letter to Fair Housing Council dated May 24, 2010, in which Respondent reaffirmed its decision to deny Complainant’s reasonable accommodation. Complainant Fair Housing Council, on June 29, 2010, drafted and sent Respondent a second request that it reconsider its decision to deny Ms. Potash’s accommodation request. In this second letter, Complainant Fair Housing Council urged Respondent to again reconsider its position and referenced web based guidance offered by HUD which directly contravened Respondents position.² The investigation determined that this letter went unanswered by Respondent.

As a result of Respondent’s continued denial of the reasonable accommodation request, the Fair Housing Council, along with Porter, filed a complaint on their own behalf with the U.S. Department of Housing and Urban Development (HUD) and assisted Complainant in filing a complaint of her own. HUD subsequently referred both complaints to the Division pursuant to a worksharing agreement between HUD and the Division.

ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination whether “probable cause” exists to credit a complainant’s allegation of discrimination. Probable

²See *Assistance Animals & the Fair Housing Act's Protections for People with Disabilities*, comments of Bryan Greene, General Deputy Assistant Secretary, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, dated May 3, 2010, linked at <http://blog.govdelivery.com/lusodeplhousing>

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cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

A Fair Housing Council will have standing to bring a complaint in its own name when it is required to divert its resources to address an incident of discrimination, or its mission is frustrated by unlawful discrimination. The Complainant in this case reported that one of its goals is to promote equal opportunity in the rental of housing and that it accomplishes this by counseling clients on obtaining housing and conducting outreach to prevent discrimination. It also will assist clients in obtaining a reasonable accommodation for their disabilities. Here, after receiving the complaint from Potash that Respondents denied her the reasonable accommodation of permission to retain her support animal, Complainant expended resources in an attempt to assist Potash.

The investigation showed that despite medical documentation demonstrating Potash's need for a reasonable accommodation, Respondent continually denied her requests. Letters sent from Respondent to Fair Housing Council substantiated Respondents' unwillingness to grant Potash's accommodation request in violation of N.J.S.A. 10:5-4 and N.J.S.A. 10:5-12 (g).

The investigation revealed that Complainant had no plans to contact Respondent until Potash contacted their office to make a complaint. At that point, Complainant diverted its resources from other activities by arranging staff to interview Potash and for an attorney to review Potash's medical documentation and draft correspondence in an attempt to alleviate Respondents' alleged discriminatory practices. Accordingly, Complainants have made a sufficient showing of harm to establish standing to file the instant complaint with the Division.

FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

8/1/11
Date

Gary LoCassio
Gary A. LoCassio, Acting Director
Division on Civil Rights